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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1961

No. 515

CARL H. ROOT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

CARL H. ROOT,
2929 Terry Road,
Santa Rosa, California,
Private Party.

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Carl H. Root, a Petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in above-entitled case on August 9, 1961.

CASE HISTORY.

This is an action to recover income taxes illegally and erroneously collected from petitioner.

In 1950 I had a property (a motel) I had to get rid of. The lawyer who was handling my business called

me to his office and made the proposition before the purchaser (Mr. Gonek) that I accept 7 notes of $5,000 each payable one note a year over a seven year period for my interest in the motel. This coming from a lawyer I didn't question it.

I accepted the proposition. The first note was due October 2, 1951. About a month before the first note was due I went out of the state for two weeks. When I returned I found that Gonek had sold the place, a quick hurry up sale, and skipped with the money. The lawyer who closed the deal between Gonek and the purchaser failed to complete all the details. One detail had he completed it, he would have had to wait till I came back to sign the paper. He let the deal go through.

My lawyer after making the proposition to me that I accept the notes failed to protect me in any way. He filed no papers anywhere. I spent three years trying to find and collect but it was useless.

In 1954 I decided I wasn't going to collect from Gonek. I took it up with the Internal Revenue and a ruling was handed down dated November 23, 1954 that this case was a NON-BUSINESS BAD DEBT and that I was allowed only $1,000 deduction on each note as they came due. The years of 1951, 1952 and 1953 were adjusted for the $1,000 loss as ruled. I was shocked by such a ruling.

The buying and selling of property is BUSINESS not NON-BUSINESS as the Internal Revenue Service ruled. It is not pleasure nor sport. It is business,



You be the Judge

BY WILLIAM DEVAULT

Howarth, [illegible] hand Sammy the [illegible]

Howarth's horror, he later [illegible] race ever existed. Sammy [illegible] with the cash. [illegible] from his income tax as a [illegible] the Internal Revenue Service refused [illegible] Howarth sued.

"In taking my money [illegible] Sammy literally stole it," Howarth contended [illegible] I am entitled to deduct the amount as a theft loss."

Howarth handed over the money, trophy and collateral. Government counsel retorted: "While Sammy abused his confidence, the money was not really stolen. In fact, Howarth was ready to cheat by betting on what he hoped was a fixed race."

If you were the judge, would you allow Howarth's deduction?

... ...

Howarth won. The court ruled that a thief is liable for income taxes on stolen money. Hence his victim is not liable, and may deduct the amount even if the victim's motives are not above reproach.

Based upon a 1986 United States decision.

nothing else. There is no definition of the word NON-BUSINESS in any dictionary.

The prefix NON is in front of a lot of words but no definition on any word.

The word BUSINESS has a lot of definitions some of which I will quote here.

WEBSTER:

Business, That which one may rightfully concern himself with or meddle with.

Business, That which busies or engages time, attention, or labor, a friendly service, a concern or interest.

STANDARD:

Business, ordinarily for profit.

Business, An important transaction.

Business, May be what one does independently.

Any one of these definitions could cover my case. These definitions should definitely bar the term NON-BUSINESS.

I let it go until 1957. The Saturday Evening Post dated February 9, 1957 published a story under the column "You Be The Judge". The story is in the same class as my case, and the court ruled that all income is taxable regardless of who gets it or how they get it, and the loser is entitled to the full deduction. This article is inserted opposite.

I immediately wrote the Internal Revenue Service asking them to open the case. Dated February 6, 1957. I waited until May 13, 1957. Not hearing from the Internal Revenue Service, I went down to the Internal Revenue Service office and inquired about the letter.

No letter or record of it was found. The Internal Revenue Service positively got that letter. The address was typed and a return address was typed. I never got it back. Claims were filed on May 13, 1957 for the years of 1951, 1952, 1953, 1954, 1955, 1956. 1957 note was not past due until October 2, 1957. A claim was filed for the 1957 loss on December 14, 1959.

On Radio Station KCBS 5:55 p.m. March 2, 1959 program IT'S A POINT OF LAW, in the case presented the court ruled that when anyone agrees to pay a bill and signs a paper to that effect and fails to pay the bill it constitutes fraud. This could cover my case also as Gonek signed these notes and has never paid them. Therefore this could be FRAUD. In all the legal papers from the Internal Revenue Service, they claim the years of 1951, 1952 and 1953 are outlawed by the statute of limitations. I claim not because I asked the Internal Revenue Service to open this case on February 6, 1957 which is less than three years after the original ruling was handed down on November 23, 1954.

This is either a SWINDLE OR FRAUD. I am entitled to the full deduction of $5,000 on each note as it comes due.

The Internal Revenue Service and the rest of the courts have cited a lot of other cases but none covers this case like the two I have cited.

Replies to ruling handed down by Judges Hamley, Merrill and Foley.

Under No. 9 the judges have used the term THEFT LOSS. I do not know who originated the term. I DIDN'T.

Under 9b the judge states "that within one month after . . ." This should read one month before. I left Detroit on September 7, 1951, went to Mexico City and returned on September 25, 1951. I have the ticket to prove it.

Under 9c I spent 3 years trying to get something out of it. I have a file an inch thick to show for it.

Under 10. I have been allowed a $1,000 deduction for a non-business bad debt. That non-business bad debt is the ruling of the Internal Revenue Service in 1954. It is all wrong. In the large paragraph, page 3, the judges state that on May 13, 1957 I filed claims requesting a part of my income taxes paid for the years 1951 through 1956 on the grounds that I was entitled to a theft loss deduction of $5,000 on each of Gonek's notes as they matured and were not paid. There is that THEFT LOSS again. I discovered that Gonek had skipped soon after I came back. I tried for three years to get something out of it, but I ran against a stone wall everywhere I went.

In paragraph at bottom of page 3 under Internal Revenue Code of 1939 which is applicable here, a claim for refund must be filed within three years from the time the return was filed, or within two from time tax was paid. This ruling makes some of my notes good.

I filed my claims just as soon as the Saturday Evening Post published the story. I have followed the instructions of the Internal Revenue Service and courts in fighting this case and if anything has been neglected or skipped, it is the fault of those agencies.

These claims should have been dated in February instead of May, because the Internal Revenue Service lost that letter.

In conclusion I claim that Gonek intended to swindle or defraud me because the people and their lawyer told how Gonek was in a hurry to get the deal closed. He was on the lawyer's neck continually to hurry up. The lawyer closed the deal in 6 days. Normally a lawyer will spend ten days to two weeks.

The courts have ruled in the Post case that all illgotten income is taxable as well as other, and the loser is entitled to the full deduction.

I hope I can get justice in the SUPREME COURT OF THE UNITED STATES.

Dated, Santa Rosa, California,
October 16, 1961.

Respectfully submitted,

CARL H. ROOT,
Private Party.

(Appendix Follows.)